

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

MATTHEW HAMILTON, et al.

Plaintiff

-v-

**CARRINGTON MORTGAGE SERVICES
LLC, et al.**

Defendants.

Case No. 2:17-cv-00707-EAS-EPD

Judge Edmond A. Sargus

Magistrate Judge Elizabeth P. Deavers

**PLAINTIFF MATTHEW R.
HAMILTON'S MOTION TO WITHDRAW
THE AMENDED COMPLAINT AND
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Plaintiff Matthew R. Hamilton, through Counsel, hereby moves this Court for an order pursuant to Civ. R. 15(a)(2) allowing him to withdraw his Amended Complaint that was prematurely filed on November 8, 2017, and grant Plaintiff's Motion for Leave to file his Amended Complaint to add in additional claims against Carrington Mortgage Services, LLC. The reason for Plaintiff's Motion are fully contained in the foregoing Memorandum in Support. Further, Counsel for Plaintiff consulted with opposing counsel, but consent has not yet been granted.

WHEREFORE, Plaintiff Matthew R. Hamilton respectfully requests this Court grant Plaintiff's Motion to Withdraw the Amended Complaint and permit him leave to Amend his Complaint and for all other relief this Court may deem just and proper. A copy of the Amended Complaint is attached as Exhibit A to this Motion.

Respectfully Submitted,

/s/ Marc E. Dann, Esq.

Marc E. Dann, Esq. 0039425

Daniel M. Solar, Esq. (0085632)

THE DANN LAW FIRM
PO Box 6031040
Cleveland, OH 44103
(216) 373-0539
(216) 373-0536 e-fax
notices@dannlaw.com
Counsel for Plaintiff

MEMORANDUM IN SUPPORT

On August 14, 2017, Plaintiff Matthew Hamilton's ("Plaintiff") commenced this action against Defendant Carrington asserting consumer claims related to mortgage servicing. Defendant filed an answer to the Complaint, and the Court set a case management deadline of November 17, 2017 to file an amended pleading. Plaintiff subsequently filed an amended Complaint on November 8, 2017, but inadvertently failed to obtain written stipulation of opposing counsel or leave of Court first.

Civ. R. 15(a) (b) provides that, "A party may amend its pleading once as a matter of course within, (a) 21 days after serving it, or (b) "if the pleading is one to which a responsive pleading is required." Here, the amendment is necessary due to post-filing events and newly discovered evidence. After the Complaint was filed, Defendant took additional steps to move forward with a foreclosure sale. Additionally, Plaintiff recently learned of new communications from a debt collector to a represented party. These new claims are set forth in the proposed Amended Complaint, attached hereto as Exhibit A.

Because the case is recently filed and the parties have not yet commenced discovery, no prejudice will result from the amendment of the pleading, nor is any amendment to the case management schedule necessary. Counsel for Plaintiff has reached out to Counsel for Defendant to seek written consent to file the Amended Complaint, however consent has not yet been granted. Plaintiff has not yet filed an Answer to the Amended Complaint filed without stipulation or leave.

WHEREFORE Plaintiff Matthew Hamilton, respectfully requests this Court permit him leave to withdraw the Amended Complaint and grant Plaintiff's Motion for Leave to file his

Amended Complaint and for all other relief this Court may deem just and proper. A copy of the Amended Complaint is attached as Exhibit A to this Motion.

Respectfully Submitted,

/s/ Marc E. Dann, Esq.
Marc E. Dann, Esq. (0039425)
Daniel M. Solar, (0085632)
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Cleveland, OH 44103
(216) 373-0539
(216) 373-0536 e-fax
notices@dannlaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2017, a copy of the foregoing was filed electronically via the Court's CM/ECF System. Notice of this filing will be sent by operation of the Court's CM/ECF System to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's CM/ECF System.

/s/ Marc E. Dann _____
Marc E. Dann (0039425)
Daniel M. Solar (0085632)
THE DANN LAW FIRM CO., L.P.A.
Counsel for Plaintiff